

**MEMORANDUM OF UNDERSTANDING #3
LOWER SPROUL PLAZA PROJECT**

This **MEMORANDUM OF UNDERSTANDING # 3** ("MOU #3"), dated as of May 24, 2012 ("Effective Date"), is by and between The Regents of the University of California, a California corporation, on behalf of the University of California, Berkeley ("University") and the Associated Students of the University of California, a nonprofit unincorporated association ("ASUC"). University and ASUC are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, University and ASUC entered into two previous Memorandum of Understandings, dated April 1, 2010 ("MOU #1), and June 29, 2010 ("MOU #2), and an addendum to these MOUs was signed on March 21, 2012 (collectively referred to herein as "LSP MOU"), whereby the Parties agreed upon certain uses of the student fees generated to support the revitalization of the Lower Sproul Plaza area of the University of California, Berkeley campus;

WHEREAS, the Lower Sproul Plaza Project ("LS Project") involves the area on the University campus flanked by and including Eshleman Hall, Zellerbach Hall, the Martin Luther King Jr. Student Union (including the MLK ASUC Mall, collectively referred to herein as "MLK"), the Cesar Chavez Student Center, and additionally the area between Zellerbach Hall and the Alumni House (collectively referred to herein as "LS Plaza");

WHEREAS, the Parties also have entered into a Commercial Activities Agreement, dated May 25, 2012 ("CAA"), whereby the ASUC Auxiliary and the ASUC Commercial Student Services Board ("CSSB") were established and given responsibility for the operation of the Student Union and LS Project;

WHEREAS, the Parties desire to clarify and confirm certain understandings regarding LS Plaza and the implications of the LSP MOU and the CAA on LS Plaza, as set forth herein;

NOW, THEREFORE, intending to be legally bound thereby, the Parties agree as follows:

AGREEMENT

- 1. Defined Terms.** Capitalized terms not defined herein have the meaning ascribed to them in the CAA.
- 2. Partnership Principles.** The University and the ASUC share the ultimate goal of improving the student experience and providing more resources to fund student activities and initiatives. The University and the ASUC recognize cross-campus departmental cooperation is the key to success of broader campus-based commercial enterprises, and requires a coordinated campus commercial policy and strategy. The University and the ASUC acknowledge that reducing operating costs and leveraging all dollars spent is as important as generating revenue (via shared space, shared resources, shared workflows and coordinated commercial activities).

The University and the ASUC recognize that mutual engagement in commercial planning and strategy involving students is an element of leadership development and experiential learning. This Section 2 is intended to reinforce Section 3.4 of the CAA.

The University will work toward Cal 1 Card ("C1C") acceptance as a means of purchase for all ASUC Commercial Activities. The University will charge the C1C committee, and any other relevant committees, to review the participant/merchant fee agreements with the intent of simplifying them and reducing barriers to use by the merchants.

As a means of reducing ASUC Auxiliary administrative costs, and at the election of the ASUC, the University in consultation with the ASUC (via its CSSB members) will work toward enabling credits to be issued to students' C1C accounts, to their CARS account, or other forms of electronic payment.

3. Clarifications Relative to Existing Documents. The Parties' intentions regarding LS Plaza continue to evolve and the following clarifications are merited. Any contradictory interpretations of the LSP MOU, the referendum documentation associated therewith, or the CAA will be resolved in favor of this MOU #3.

a. Career Center: In connection with the revitalization of LS Plaza, the Career Center will move to 2440 Bancroft Way. The moving expenses and tenant improvements associated with this move will be paid with the Lower Sproul Project Funds. The Career Center's ongoing rent will be paid from the student services fee (formerly known as the "registration fee").

b. Multi Cultural Community Center: The Multi Cultural Community Center, multicultural student development, and the gender equity resource center and their respective successors ("MCC") will be housed in two facilities: one in MLK and the other in Cesar Chavez Student Center. Neither ASUC nor ASUC Auxiliary will be required to fund the maintenance costs for MCC space. For purposes of consistency with the CAA, the MCC space is considered to be ASUC Student Activity Space whose control the ASUC hereby delegates to the MCC for purposes consistent with the MCC Mission. The MCC must be used in accordance with applicable law and University policy.

c. Graduate Student Facilities: In the revitalized LS Plaza, a graduate student-focused facility (of at least 2000 ASF as per MOU #1 Exhibit C) will be located in Eshleman Hall with access to a contiguous (adjacent and touching) patio deck ("GS Facility"). The GS Facility's patio deck will be generally accessible only through the GS Facility. The GS Facility and its adjacent and touching patio deck will be accessible with the use of an exclusive use card key, which will be provided only to students authorized by the Graduate Assembly ("GA") and to appropriate safety and security University representatives. The GA will govern the use of the GS Facility, and will develop policies to allow GS Facility to be open to all graduate students. Access to the patio deck is a privilege and unauthorized use of the card keys or the patio deck or use that violates University policy or applicable law will lead to revocation of that privilege, in addition to subjecting such persons to the student conduct process and applicable legal processes. The GS Facility must be used in accordance with applicable law and University policy.

d. Public Service Center: In the revitalized LS Plaza, Cal Corps will be located in Eshleman Hall within the Public Service Center. Neither ASUC nor ASUC Auxiliary will be required to fund the maintenance costs for the Public Service Center. The Public Service Center

maintenance can be attributed to the campus contribution to the maintenance of the facilities. For purposes of consistency with the CAA, the Public Service Center space will be considered ASUC Student Activity Space. Control of the portion of the Public Service Center that is intended for use by Cal Corp, to be decided by ASUC and GA leadership in consultation with the Cal Corps Director, is hereby delegated to Cal Corp for purposes consistent with the Cal Corp Mission. The portion within the Public Service Center of Eshleman Hall that is intended for use by student organizations will be controlled by the ASUC and the ASUC Executive Vice President, consistent with all other student group space allocations in Lower Sproul, will assign usage. The Public Service Center space must be used in accordance with applicable law and University policy.

e. Anthony Hall: Anthony Hall will continue to be a graduate student space overseen and governed by the GA and used only in accordance with applicable law and University policy. Maintenance and custodial services for Anthony Hall will be included in the maintenance and custodial plans for Eshleman Hall and MLK.

f. Anna Head Alumnae Hall: The space located at 2537 Haste, known as Anna Head Alumnae Hall ("Alumnae Hall"), will be used primarily as a student events, practice and performance space for registered student groups in accordance with the following:

- i. The Vice-Chancellor of Student Affairs will have oversight of the Alumnae Hall space.
- ii. Alumnae Hall will be booked and managed by the ASUC Auxiliary in consultation with the ASUC and GA leadership.
- iii. Once Alumnae Hall has been renovated (currently estimated to be completed by Spring term 2013), Alumnae Hall may be used by the ASUC, GA, and registered student groups, consistent with the direction of the ASUC or the GA. Additional use by campus units and outside parties will be determined by the ASUC and GA leadership in consultation with the CSSB.
- iv. Alumnae Hall may be used for practice and performance, student events or other activities suited to this space, in conformance with applicable law and University policy. Food and drink may be permitted.
- v. The Parties understand that security is paramount at this location and will work to ensure that safe use of the facility is available during all open hours.

g. ASUC Auxiliary Space: In conformance with LS MOU #1 Exhibits A and B, space for the ASUC Auxiliary will be afforded in Eshleman or MLK, preferably in contiguous adjacency to ASUC Executive offices. Eshleman Hall must include space for the ASUC Auxiliary's Center for Advising and Leadership (or its successor). For purposes of consistency with the CAA, the ASUC Auxiliary space will be considered ASUC Student Activity Space whose control is delegated to the CSSB for purposes consistent with its establishment, as set forth in the CAA.

h. Fundraising Priorities: Throughout the construction phase of the LSP Project, the Project Related Work Group and Program Committee and the Student Affairs development officers will work with the ASUC Auxiliary's External Relations Department to determine fundraising priorities, subject to the approval of the ASUC Executive Director. These priorities

should reflect a long-term fundraising plan for the ASUC Auxiliary. In the time prior to revenues being sufficient to support an External Relations person full time within ASUC, and ASUC is leveraging VCSA development resources, the VCSA will establish the fundraising priorities among all the VCSA stakeholders.

i. **Hearst Gym Space:** The University and the ASUC remain committed to providing the gym space in Hearst at the availability specified in MOU #2 (9pm -12am Monday through Friday and 9am - 9pm on Sat and Sun). In recognition of the successful administration of the Hearst gym space, and in response to ASUC groups requests for access to the spaces at alternate times, the University and ASUC agree to work toward extending ASUC hours for as many Hearst gym spaces as feasible to the hours 6pm - 9pm Monday through Friday, under the existing usage terms of MOU #2.

j. **Restoration of ASUC Control:** For all spaces where the ASUC has delegated its control pursuant to this MOU #3, such control will be restored to the ASUC if the space is vacated by the delegate or if the space is used for purposes inconsistent with the mission of the delegate or in violation of applicable law or University policy, as determined by the University in consultation with the ASUC and GA.

4. **Student Activity Space.** Pursuant to Section 6.5 of the CAA, Student Activity Space may only be made available for a fee with the approval of the CSB and such Space must be rededicated as Commercial Activity Space for the term of that rental. ASUC Auxiliary may charge third parties and campus departments usage fees for Student Activity Space and Commercial Activities Spaces but may not charge registered students any fees associated with access or usage of such spaces. The Parties acknowledge that the meditation space constructed in connection with the LSP Project will remain dedicated to meditation. The Parties acknowledge that the ASUC and the GA may grant a reasonable number of fee waivers for costs associated with setup and cleanup of Commercial Activity Spaces, including indirect costs, so that the cost is borne by the ASUC Auxiliary. The number of such waivers will be subject to CSSB approval.

5. **24-Hour Access.** The Parties will provide registered students with 24-hour access to Eshleman Hall, the MLK campus living room, the Cesar Chavez Student Learning Center, and other spaces that may be agreed upon by the Parties. The scope of access (which facility(ies) at which times) will be determined by the Parties, taking into account such factors as actual usage, safety of the students, cleanliness of the facilities and the LS Plaza, and the costs of providing security.

As determined by the Program Committee, appropriate building design features will be implemented and funding (consistent with as per MOU #1 Exhibit B) accorded so as to support 24-hour student access to the following spaces:

- The Lower Sproul and Upper Sproul levels of MLK, including the MCC space, excluding vendor spaces and associated support/back of house spaces
- The third floor MLK meeting rooms with elevator connection to the Upper Sproul level of MLK.
- All of Eshleman excluding vendor spaces and associated back of house spaces, and mechanical spaces.

- The Student Learning Center (SLC) in Cesar Chavez including corridors connecting the SLC with a southward facing 24-hour entrance on the Lower Sproul plaza level.
- The bridge connection between Eshleman and MLK, which is at the Upper Sproul.

Actual scheduling of hours of operation of these areas shall be defined in accordance with the 1998 Commercial Activities Agreement, MOU #1 and MOU #2.

Providing 24-hour access to the SLC space will satisfy the dedicated 24-hour study area stipulation of MOU #1, Section 3.6(c).

6. Ongoing Maintenance of LS Plaza. Maintenance of the LS Plaza is a high priority for the Parties. The student fee referendum associated with the revitalization of LS Plaza included funding for operations and maintenance of plant ("OMP") and the Parties expect the Lower Sproul Program Committee (as defined in MOU #1, Section 5.1) to allocate Lower Sproul project funds accordingly.

a. ASUC Auxiliary Budget: The ASUC Auxiliary business model and annual budget will include adequate funding for routine maintenance of LS Plaza and a long-term plan that allows for funding of more significant maintenance items. As previously stated in MOU #2, ASUC will use the portion of the LSP Project funds identified in Attachment C to MOU #2 for OMP and capital renewal.

b. Supplement to ASUC Budget: At such time as certain outstanding bonds are retired, which is currently estimated to occur during the fiscal year 2015-2016, the entire 1988 Student Center Services Building Project Referendum Fee (\$6.00 per student including summer at ½) will be directed to the ASUC (with the portion paid by graduate students going directly to the GA. If going directly to the GA is not immediately possible the ASUC will provide the funds to the GA within 30 days of receipt.) As directed by the referendum and related documents, at least 30% of that Referendum Fee must continue to fund ongoing maintenance of LS Plaza. The remaining 70% of the revenue will be available to fund student programming as well as additional future maintenance items. Consistent with the referendum language.

c. University Budget: University will identify funding for both OMP and deferred maintenance and capital renewal that, together with the ASUC funding will provide for ongoing maintenance for the facilities that encompass the LSP Project. University contributions pursuant to this Section 6(c) or elsewhere in this MOU #3 will not exceed the University proportion of the LSP Project funding previously agreed upon by the Parties.

7. Anthony Hall Endowment. The Anthony Hall endowment described in MOU #2 was executed in June 2011.

8. Student Service & Class Pass Fee Funding for ASUC and GA. This confirms the permissibility of the ASUC, GA, and ASUC Auxiliary to request Student Service Fee, and Class Pass Referendum Funding through the University process to review and prioritize allocation of those funds.

a. Reallocation of CSL Student Fees: The current portion of student service fees that is allocated to the Campus Student and Leadership (CSL) under the Dean of Students should be reallocated to the ASUC Auxiliary's Center for Advising and Leadership so that these fees may be used as intended in their original allocation to CSL.

9. Alcohol Policy in LS Plaza.

a. Consistent with University policy and applicable law, the ASUC, including the Graduate Assembly, may hold events within the Lower Sproul Area (and Anthony Hall) where alcohol in any variety is served. Should the ASUC or GA wish to have alcohol made available at an event, the ASUC or GA will complete and the ASUC Auxiliary will file the requisite paperwork required for authorization and policy/law compliance. Furthermore, ASUC Auxiliary staff, or their qualified designees, will be available at the request of the ASUC and the GA to serve as the responsible attendees at such events, as may be required by University policy. Lastly, the Parties will work toward University approval processes for such events in order to enable forty-eight hour notice and holding of events, for non-external alcohol vendor use. The foregoing provisions of Section 9(a) will be extended to those explicitly named ASUC and GA affiliated groups that are approved and authorized by both the University and the ASUC or GA.

b. Lessees of Commercial Activity Space may be permitted to offer alcoholic beverages for sale in conformance with University policy and applicable law, provided that (1) such sale is not prohibited by the applicable lease agreement; (2) the lessee holds all necessary beverage licensing; and (3) the lessee is otherwise in compliance with the applicable lease. The provision does not apply to those Student Activity Spaces that are temporarily deemed to be Commercial Activity Spaces pursuant to Section 4 of this MOU #3 and/or the CAA.

10. Deck Use in Lower Sproul Buildings. Decks and rooftop spaces of MLK and Eshleman are explicitly designated as ASUC Student Activity Spaces (with the GS Facility patio deck in Eshleman remaining under GA control) whose use shall be governed in accordance with the CAA and Section 3 of this MOU #3, which takes precedence provided that all use must be in accordance with applicable law and University policy.

11. ASUC Recognition in Lower Sproul Plaza. Recognition of the ASUC's past and present contributions (including without limitation to the contributions listed in Exhibit A) to the Berkeley campus shall be incorporated into the LSP Project. The design for the recognition will be created in collaboration with the UC Berkeley Foundation and the Project Related Work Group and Program Committee.

Such design will favor, in the absence of an alternative design jointly agreed upon by the Parties, the use of the LS Plaza as a foundation for embedding commemorative plaques recognizing each contribution.

12. Naming Rights for Lower Sproul Plaza, MLK, Eshleman Hall, and Anthony Hall. Any changes or additions to naming of indoor and outdoor spaces in the Lower Sproul Plaza, MLK, Eshleman Hall, and Anthony Hall require the approval of the ASUC (or the GA in the case of Anthony Hall), before completing the campus naming process as defined by University Policy.

13. Student Representation. In the spirit of collaboration established through the Lower Sproul Project, the University recognizes the ASUC and GA's right to appoint undergraduate and graduate student representatives, respectively, to University committees, where student participation is exists. These students may be in addition to students on the committees representing a student body at large voice. These appointments follow the appointment procedures of the committee, which are often recommendations to a Vice Chancellor or Chancellor. These student representatives can be removed at any time by their appointing bodies.

14. ASUC and GA Dissolution. In the event the ASUC or GA are dissolved, their successor organizations are granted all the rights and privileges afforded in MOUs #1, 2, and 3, and their amendments.

15. Term. The term of this MOU #3 will commence on the Effective Date and will terminate on December 31, 2040, provided that the Term will terminate earlier and simultaneously to the CAA if the CAA is terminated in accordance with its provisions prior to December 31, 2040. Notwithstanding the foregoing, Sections 1-5, 7-10, and 13-14 - will survive termination.

16. Disputes & Notices. Sections 8 and 9 of MOU #2 govern this MOU #3.

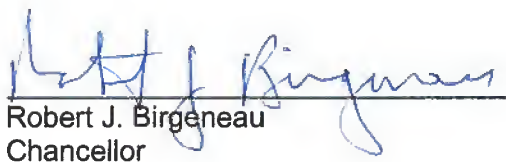
17. Severability. If any provision of this MOU #3 or the application thereof to any person, entity or circumstance will, to any extent, be invalid or unenforceable, the remainder of this MOU #3, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each provision of this MOU #3 will be valid and be enforced to the fullest extent permitted by law.

18. Waiver. The waiver by either Party of a breach of any provision of this Agreement will not be deemed a continuing waiver or a waiver of any subsequent breach, whether of a like nature or otherwise.

19. No Personal Liability. Notwithstanding anything to the contrary in this MOU, or in any agreements or documents referenced in any of the foregoing, from and after the effective date of MOU #1, no person signing one or more of the MOUs or this Amendment on behalf of a Party to such agreement(s) shall be personally liable in any way for the breach of any covenant or failure of any condition pertaining to such Party under the foregoing agreements, and the Parties hereby waive and release such persons individually from all claims on account of any such breach or failure.

IN WITNESS WHEREOF, the foregoing has been agreed to, as of the date first above written, by:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: 
Robert J. Birgeneau
Chancellor

THE ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA

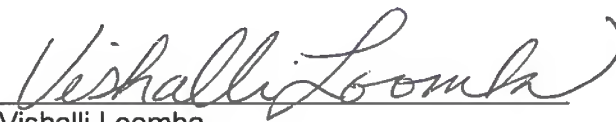
By: 
Vishalli Loomba,
ASUC President

EXHIBIT A

ASUC RECOGNITION

1. California Field
2. Stephen's Union
3. Eshleman Hall [now Moses Hall]
4. California Memorial Stadium, and previously California Field
5. Harmon Gymnasium
6. Edwards Track Stadium
7. Martin Luther King, Jr. Student Union
8. New Eshleman Hall
9. Recreational Sports Facility
10. B.E.A.R.S Initiative for Student Union complex
11. University Health Service/Tang Center
12. Hellman Tennis Center
13. Haas Pavilion
14. Goldman Field and Edwards Track
15. Witter Field
16. Maxwell Family Field
17. High Performance Center